THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1060 of 2001

Dated:25.07.2007

Between
T.M.Mallikarjunaiah

.....Petitioner

and

1.The Commandant, CISF Unit, RSTPS
(R) Ramagundam, Krsimnagar District
and another.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1060 of 2001

ORDER:

This writ petition has been filed seeking a Mandamus to declare the proceedings No.E-38014/45/RSTPS ®/AD.1/2000-3651, dated 26.8.2000 issued by 1st respondent reverting the petitioner from the post of Head Constable to the post of Lance Naik and proceedings No.C-11099/CISF/RSTPS (R) QM/ACC/ 2001-71, dated 13.1.2001 issued by 1st respondent rejecting the application of petitioner for retaining 'B' type quarter as arbitrary and illegal.

It appears that the petitioner was

appointed as a Constable on 25.3.1982 in CISF. Subsequently, he was promoted as Head Constable with effect from 16.3.1999. However, as per the promotion order, he was supposed to pass Promotion Cadre Course (for short 'PCC') within the stipulated period of two years, and if he fails to pass the same, he shall be reverted immediately. It appears after his promotion, the petitioner appeared for PCC test on 4.8.99 and 8.8.2000. Unfortunately, he did not pass paper III. Therefore, the respondents passed the impugned order stating that the petitioner had attended PCC thrice, but failed to qualify and he was given fourth chance to clear the supplementary test of PCC vide FHQrs., New Delhi letter No.E/37016/30(2)/Trg/99/PCC/1096, dated 22.3.2000, but again, he was declared failed in Paper-III. Thus, he has not qualified to hold HC/GD even after availing four chances.

Therefore, he was reverted to his substantive rank of Lance Naik. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that though the promotion order dated 16.3.1999 shows that the petitioner should pass the test within reasonable time, the instructions issued in this regard on 25th January, 1999 shows that the personnel promoted as Head Constable should pass the PCC within two years. Further, the petitioner appeared for the PCC course only twice after he was promoted as Head Constable firstly on 4.8.1999 and secondly on 8.8.2000. Therefore, even assuming that the petitioner is supposed to pass the test within three attempts, he had not availed three chances after his promotion. Therefore, looking from any angle, the reversion of the petitioner is bad in law.

Learned counsel for the respondents strenuously contended that the petitioner was given four chances i.e., before his promotion on 4.2.1998, 15.2.99 and after his promotion on 4.8.1999 and 18.8.2000. Since the petitioner has not qualified, even after appearing for the test for four times, the question of continuing the petitioner as Head Constable does not arise. Therefore, he is not entitled to be continued as Head Constable as per the promotional order dated 16.3.1999. As such, the reversion of the petitioner is neither arbitrary nor illegal.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

May be, the petitioner appeared twice for PCC, before he was promoted on 16.3.1999. The criteria is not how many times he had

appeared the test after his promotion. But he should have passed the test within two years after he was promoted to the post of Head Constable on 16.3.1999. Admittedly, two years time would lapse by 15.3.2001. In the meanwhile the petitioner appeared twice but he failed in paper III and he is entitled to pass the remaining paper III within two years and he had one more chance to appear for the examination. The respondents, without considering the period of two years or as to the eligibility of petitioner to pass the test by appearing once again, arbitrarily reverted him under the impugned order. Therefore, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order dated 26.8.2000 is set aside. The respondents are directed to treat the petitioner as Head Constable with effect from 16.3.1999 continuously till date and he

shall be given one more opportunity to complete the PCC and if he passes the said examination he shall be allowed to continue as Head Constable, otherwise, the authorities are at liberty to take action, as per law. The department shall also give opportunity to the petitioner to undergo the training as required for the purpose of appearing for paper III, in which he failed.

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25-07-2007

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